

Message Text

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ACTION EB-07

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EA-09 EUR-12 NEA-10 /117 W
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UNCLAS SECTION 1 OF 2 GENEVA 0316

E.O. 11652: N/A

TAGS: UNCTAD, EWWT

SUBJECT: UNCTAD: WORKING GROUP ON INTERNATIONAL SHIPPING, GENEVA,
JAN. 5 - 16, 1976

1. SUBJECT MEETING WAS SUCCESSFUL AND PRODUCED THE FOLLOWING
RESOLUTION:

QUOTE:

THE UNCTAD WORKING GROUP ON INTERNATIONAL SHIPPING
LEGISLATION,

RECALLING THE RESOLUTION ON BILLS OF LADING ADOPTED BY THE
WORKING GROUP AT ITS SECOND SESSION, INVITING THE UNITED
NATIONS COMMISSION IN INTERNATIONAL TRADE LAW TO UNDER-
TAKE AN EXAMINATION OF RULES AND PRACTICES ON BILLS OF
LADING WITH A VIEW TO REVISING AND AMPLIFYING THE RULES
AS APPROPRIATE, AND TO PREPARE, IF APPROPRIATE, A NEW
INTERNATIONAL CONVENTION FOR ADOPTION UNDER THE AUSPICES
OF THE UNITED NATIONS,

NOTING WITH APPRECIATION THE PRIORITY WORK DONE BY THE
UNITED NATIONS COMMISSION IN INTERNATIONAL

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TRADE LAW ON THE SUBJECT OF BILLS OF LADING, IN

PARTICULAR THE TOPICS INDICATED IN PARAGRAPHS 1 AND 2 OF THE RESOLUTION OF THIS WORKING GROUP AND THE DRAFT CONVENTION ON THE CARRIAGE OF GOODS BY SEA PREPARED BY THE UNCITRAL WORKING GROUP ON INTERNATIONAL SHIPPING LEGISLATION, AS WELL AS THE REPORT ON THE DRAFT CONVENTION PREPARED BY THE UNCTAD SECRETARIAT (TD/B/C.4/ISL/19 AND SUPPS. 1 AND 2), HAVING EXAMINED AND DISCUSSED THE DRAFT CONVENTION AND THE COMMENTS THEREON BY THE UNCTAD SECRETARIAT, CONSIDERING THAT THE DRAFT CONVENTION MEETS WITH THE WISHES CONCERNING REVISION AND AMPLIFICATION OF THE RULES ON INTERNATIONAL CARRIAGE OF GOODS BY SEA, EXPRESSED IN THE RESOLUTIONS ON BILLS OF LADING OF THIS WORKING GROUP, AND THAT THE DRAFT CONVENTION TAKEN AS A WHOLE REFLECTS A NEW BALANCE BETWEEN ALL INTERESTS CONCERNED, WHICH IS INTENDED TO BE OF BENEFIT TO INTERNATIONAL TRADE AND ESPECIALLY TO DEVELOPING COUNTRIES,

IN VIEW OF THE FOREGOING THE WORKING GROUP DECIDES TO:

- (1) ENDORSE THE DRAFT CONVENTION TAKEN AS A WHOLE AS GENERALLY ACCEPTABLE,
- (2) INVITE THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW TO CONSIDER THE COMMENTS ON THE DRAFT CONVENTION MADE BY THIS WORKING GROUP IN THE COURSE OF ITS DELIBERATIONS ON THE DRAFT AND APPEARING IN THE REPORT OF THIS SESSION AND NOTING PARTICULARLY THAT THE TEXT OF THE DRAFT CONVENTION SHOULD BE GIVEN FURTHER CONSIDERATION IN THE LIGHT OF THE REPORT OF THIS SESSION AND THE FOLLOWING POINTS TO WHICH ATTENTION IS DRAWN:

ARTICLE 1, PARAGRAPH 4

PARAGRAPH 4

THE DEFINITION OF "GOODS" SHOULD BE RECONSIDERED.

PARAGRAPH 5

REQUIRED REDRAFTING TO CLARIFY THE MEANING OF "SPECIFIED" IN THE ENGLISH VERSION OF THE TEXT.

ARTICLE 6

PARAGRAPH 1

- TO RECOMMEND THAT UNCITRAL ATTEMPT AHRMONIZATION OF VIEWS, IN ORDER TO REDUCE IF POSSIBLE THE ALTERNATIVES IN THE DRAFT AND CONSIDER THE IMPLICATIONS OF A DIFFERENTIATED SYSTEM OF LIABILITY FOR LOSS AND DAMAGE TO UNCLASSIFIED

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THE GOODS AND LOSS CAUSED BY DELAY IN DELIVERY.

- TO RECONSIDER WITH A VIEW OF EXPRESSING THE LIMIT IN ANOTHER MONETARY UNIT OF ACCOUNT, WITH A SYSTEM FOR PERIODICAL REVIEW AS WOULD BE APPROPRIATE IN VIEW OF THE UNIT OF ACCOUNT CHOSEN.

- MORE DETAILED CONSIDERATION IS REQUIRED ON THE GROSS WEIGHT AS A PHYSICAL BASIS FOR CALCULATION.

ARTICLE 8

"LOSS" AND "DELAY" SHOULD BE ADDED TO MAKE THE TEXT CONFORM WITH ARTICLES 5 AND 6; AND TO CONSIDER, IN THE LIGHT OF THE LIMIT OF LIABILITY TO BE INSERTED IN ARTICLE 6, PARAGRAPH 1, THE EXTENT TO WHICH THE CONCEPT OF THE CARRIER MIGHT BE BROADENED TO INCLUDE SERVANTS OR AGENTS.

ARTICLE 10

THE LIABILITY OF AN ACTUAL CARRIER SHOULD BE CLARIFIED WITH RESPECT TO THE SITUATION WHEN THE CARRIER TO WHOM THE CONTRACTING CARRIER HAS ENTRUSTED THE PERFORMANCE OF A PART OF THE CARRIAGE, DOES NOT IN FACT PERFORM THE CARRIAGE HIMSELF BUT EMPLOYS ANOTHER CARRIER TO PERFORM THE PART CONCERNED.

ARTICLE 11

THE TEXT SHOULD BE RECONSIDERED WITH A VIEW TO DEFINING CLEARLY THE SITUATION IN WHICH THIS ARTICLE SHALL BE APPLICABLE (THROUGH BILLS OF LADING) AND TO EXAMINING WHETHER OTHER IMPROVEMENTS CAN BE MADE; FURTHER CONSIDERATIONS SHOULD CONTEMPLATE THE INTERESTS OF CARGO OWNERS AND CARRIERS WHETHER THESE ARE CONTRACTING OR ACTUAL CARRIERS.

ARTICLE 13

PARAGRAPH 1 OF THIS ARTICLE SHOULD BE REDRAFTED SO AS TO IMPOSE ON THE SHIPPER A DUTY TO INFORM THE CARRIER OF THE NATURE OF THE GOODS AND THE CHARACTER OF THE DANGER AND IF NECESSARY THE PRECAUTIONS TO BE TAKEN.

ARTICLE 16

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PARAGRAPH 1

SHOULD BE RECONSIDERED WITH RESPECT TO THE EFFECT OF A
RESEFVATION IN CASES WHERE THE CARRIER, BY EMPLOYING
REASONABLE MEANS OF EHCKING, OUGHT TO HAVE DISCOVERED
THA THE BILL OF LADING CONTAINED INACCURATE PARTICULARS
CONCERNING THE GOODS.

PARAGRAPH 4

THIS PARAGRAPH SHOULD BE AMENDED TO RECOGNIZE THE PRINCIPLE
THAT DEMURRAGE INCURRED AT PORT LOADING MAY NOT BE
RECOVERED FROM A THIRD PARTY IN GOOD FAITH TO WHOM THE
BILL OF LADING HAS BEN TRANSFERRED UNLESS THE CLAIM HAS
BEEN NOTED ON THE BILL OF LADING.

ARTICLE 19

PARAGRAPH 2

TO RECONSIDER THE QUESTILN OF PROLONGATION OF THE PERIOD
TO ENSURE ITS ADEQUACY.

PARAGRAPH 6

THE PRINCIPLE THAT NOTICE TO CONTRACTING CARRIER SHOULD
HAVE SAME EFFECT AS IF GIVEN TO ACTUAL CARRIER SHOULD
BE ADEQUATELY REFLECTED IN THE TEXT.

ARTICLE 20

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PARAGRAPH 1

TO RECONSIDER THE QUESTION OF PROLONGATION OF THE PERIOD
TO ENSURE ITS ADEQUACY.

ARTICLE 22

CONSIDERATION SHOULD BE GIVEN TO ADDING A NEW PARAGRAPH
THAT AS A CONDITION FOR THE ENFORCEMENT OF AN ARBITRATION
CLAUSE IN A CHARTER PARTY AGAINST A THIRD PARTY IN GOOD
FAITH TO WHOM A BILL OF LADING ISSUED UNDER THE CHARTER
PARTY HAS BEEN TRANSFERRED, SHALL BE THAT THE BILL OF
LADING CONTAINS A SPECIAL ANNOTATION INCORPORATING THE
ARBITRATION CLAUSE INTO THE BILL OF LADING AND STIUPLATING
THAT IT SHALL BE BINDING UPON THE THIRD PARTY.

ARTICLE 24

SHOULD BE RECONSIDERED WITH A VIEW OF PROVIDING THAT
ARTICLE 20 ON TIME LIMITATION OF CLAIMS DOES NOT APPLY
TO CLAIMS BY THE CARGO INTEREST FOR RECOVERY OF CONTRI-
BUTIONS MADE IN GENERAL AVERAGE.

(3) URGE THE UNITED NATIONS COMMISSION ON INTERNATIONAL
TRADE LAW TO FINALIZE THE DRAFT CONVENTION WITHOUT
DELAY WITH A VIEW TO ITS ADOPTION AT A CONFERENCE OF
PLENIPOTENTIARIES TO BE HELD IN 1977 OR EARLY 1978.

(4) REQUEST THE UNCTAD SECRETARIAT TO CONVEY THIS RESOLUTION TOGETHER WITH THE REPORT OF THIS SESSION OF THE WORKING GROUP (TD/B/C.4/ISL/.....) AND THE REPORT OF THE UNCTAD SECRETARIAT (TD/B/C.4/ISL/19) TO THE UNITED NATIONS INTERNATIONAL TRADE LAW COMMISSION TO BE AVAILABLE AT ITS NINTH SESSION; AND

(5) EXPRESSES THE WISH THAT THE OUTCOME OF THE WORK ON THE DRAFT CONVENTION AT THE NINTH SESSION OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW WILL BE CONVEYED TO THIS WORKING GROUP FOR ITS COMMENTS IN TIME FOR THE SECOND PART OF ITS SESSION IN JULY 1976, SO AS TO ENABLE THE WORKING GROUP TO SUBMIT ITS FINAL COMMENTS ON THE UNCITRAL DRAFT CONVENTION TO THE GENERAL ASSEMBLY. DALE

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